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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,451	03/12/2001	Earl J. Votolato	SPELL-003A	9847

34284 7590 07/16/2003

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EXAMINER

DRUAN, THOMAS J

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 07/16/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/804,451

Applicant(s)

VOTOLATO, EARL J.

Examiner

Thomas J. Druan, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Request for Continued Examination***

1. The Request for Continued Examination (RCE) filed on 27 May 2003 under 35 CFR 1.114 is acceptable. An action on the RCE and Amendment filed therewith follows.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,878,501 to Owens et al. (hereinafter Owens) in view of US 705,441 to Putney.

Owens discloses the invention substantially as claimed including a handle 16 with a distal portion 32 and a generally hollow interior portion (a slot) 52; a blade 12 secured to and extending from said distal portion, said blade having a cutting edge (inherent); an integral, generally cylindrical blade cover 14, with a longitudinal slit through which the blade resides, for covering the cutting edge of the blade when the tool is not in use (note: "cylindrical" need not be a circular cylinder); a blade cover retainment member 78 for lockedly maintaining the blade cover in a position covering the cutting edge of the blade; a hand operable releaser 76 for releasing the retainment member from a locking configuration; a hand operable blade cover driver 72 for moving the blade cover an exposure distance (which is any distance that the cover is moved so

as to expose the blade) and exposing the cutting edge of the blade for use; and an intercept member 74 for disengaging the blade cover driver upon blade cover movement exceeding the exposure distance and dispatching the blade cover to the locking configuration covering the cutting edge of the blade (column 4, lines 17-37).

The releaser and driver are incorporated as a trigger assembly comprising an exteriorly accessible finger-movable trigger lever 74/76 extending from the handle and in engaged communication first with the retainment member for releasing said member from the locking configuration upon initial trigger lever movement (when the trigger lever is pushed in) and in engaged communication second with a proximal site of the blade cover for moving the blade cover said exposure distance upon continued trigger lever movement (when the trigger lever is slid away from the blade). Said retainment member, said intercept member, and said proximal site of the blade cover are disposed within the generally hollow interior portion of the handle. The intercept member, which is part of the trigger lever, is disposed within a travel path of the blade cover (the slot 52) beyond said exposure distance for disengaging the engaged communication of the trigger lever with said proximal site of the blade cover when the blade cover is to be returned to a position that covers the cutting edge of the blade.

Owens does not disclose an intercept member that dispatches the blade cover without continued action by a user. Putney teaches the use of a spring **F** that cooperates with an intercept member **G** to automatically dispatch a blade cover without continued action by a user once the intercept member is pressed inwardly toward the blade **D** (page 1, lines 71-81) in order to quickly and effortlessly sheathe the blade.

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Therefore, it would have been obvious to one skilled in the art at the time of the invention to provide the intercept member of Owens with a spring to automatically dispatch a blade cover without continued action by a user in order to quickly and effortlessly sheathe the blade.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection. However, the examiner will address some comments made in Applicant's arguments. Applicant contends that Owens does not teach an intercept member that dispatches the blade cover without continued action by the user. A return spring urging a blade guard towards a position so as to cover a blade is old and well known in the knife art, and thus adding the spring of Putney to Owens is an obvious combination. Applicant cites on page 5 of Paper No. 14 a portion of the Original Specification which describes in detail the structure and mechanics of the intercept member (alternate terms are used in the specification), none of which are specifically or definitely claimed. Therefore, the simple addition of a return spring to the device of Owens makes anticipates the added limitation that "the intercept member dispatches the blade cover without continued action by a user." Furthermore, "continued action" does not preclude **any** action by a user, such as that of disengaging an intercept member, but only prohibits continuous action by a user, such as manually sliding the blade cover forward to sheathe the blade.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*tjd*  
tjd

July 14, 2003

*Boyer Ashley*  
BOYER ASHLEY  
PRIMARY EXAMINER